

REMARKS

Claim 9 is pending. No new matter has been added by way of the present amendments. For instance, claims 1-8 and 10 have been cancelled. Also, claim 9 has been amended to remove the recitation of "or hydrate." Accordingly, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 9 and 10 under 35 U.S.C. § 112, first paragraph for the reasons recited at pages 4-10 of the outstanding Office Action. Applicants respectfully traverse.

The Examiner contends that there exists insufficient enablement for the recitation of "hydrate" in the claims. Applicants traverse and submit that the rejected term has been removed from the pending claim. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Provisional Obviousness-type Double Patenting

The Examiner has provisionally rejected claims 9 and 10 under the judicially created doctrine of obviousness-type double patenting as

being obvious over claims 37, 40, 52, 56, 57, 75 and 76 (as well as apparently claim 59) of copending 09/214,277.

The Examiner has also provisionally rejected claims 9 and 10 under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1 and 2 of copending 10/704,876.

Applicants respectfully traverse each of the above rejections.

Without conceding that the Examiner's rejections have any basis, Applicants point out that a "provisional" double patenting rejection should continue to be made by the Examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the Examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent. See MPEP § 804(I)(B).

In this regard, Applicants submit that in view of the removal of the actual enablement rejection above, the "provisional" rejection is the only remaining rejection. Therefore, the Examiner is requested to withdraw the rejection and apply any suitable obviousness-type double patenting rejections in the other pending applications.

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Accordingly, Applicants submit that the present application is in condition for allowance. The Examiner is therefore requested to withdraw all rejections and allow the currently pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. 42,874) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

By



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